

Corresponds to AO 241

Petition for a Writ of Habeas Corpus Under 28 U.S.C. §
2254 (Rev.6/19)

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**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY**

3:23-cv-1934 AA

United States District Court		District of Oregon
Name (under which you were convicted): Duarte Papa-Vicente		Docket or Case No.: 22-CR-55242
Place of Confinement: Portland Police Bureau		Prisoner (SID) No.:
Petitioner (include the name under which you were convicted) Duarte Papa-Vicente		Respondent (authorized person having custody of petitioner) v. State of Oregon
The Attorney General of the State:		

CONVICTION UNDER ATTACK

1. Name and location of court that entered the judgment of conviction you are challenging:

Circuit Court of the State of Oregon For Multnomah County

2. Criminal docket or case number (if known): PP 22-294604

3. (a) Date of judgment of conviction (if known):

(b) Date of sentence: 11/29/2022

4. Length of sentence: N/A

5. Identify all crimes for which you were convicted and sentenced in this case:
-
- Harassment(Class B Misdemeanor), Felony Assault (in the fourth degree).

6. What was your plea? (Check one)

☐ Not Guilty☐ Guilty☒ Nolo Contendere (No Contest)☐ Insanity Plea

If you entered a guilty plea(s), list what crimes you pleaded guilty to, and what crimes you did not plead guilty to:

7. If you pleaded not guilty, what kind of trial did you have? (Check one)

☐ Jury☒ Judge Only

8. Did you testify at trial?

☐ Yes☒ No

EXHAUSTION OF STATE REMEDIES

DIRECT APPEAL

9. Did you directly appeal from the judgment of conviction?

☐ Yes

☒ No

- a. Name of court: N/A
- b. Docket or case number (if known): N/A
- c. Result: N/A
- d. Date of result and citation (if known): N/A
- e. Grounds raised:
N/A

10. Did you seek further review of the decision on appeal by a higher state court?

☐ Yes

☒ No

- a. Name of court: N/A
- b. Docket or case number (if known): N/A
- c. Result: N/A
- d. Date of result and citation (if known): N/A
- e. Grounds raised:
N/A

11. Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes

☒ No

- a. Docket or case number (if known): N/A
- b. Result: N/A
- c. Date of result and citation (if known): N/A
- d. Grounds raised:
N/A

12. If you did not directly appeal from the judgment of conviction, explain briefly why you did not:

I haven't filed an appeal because 30 business days have already passed.

POST-CONVICTION RELIEF

13. Did you file a petition for state post-conviction relief?

☐ Yes

☒ No

- a. Name of court: N/A
- b. Docket or case number (if known): N/A
- c. Nature of proceeding: N/A
- d. Did you receive an evidentiary hearing?
☐ Yes ☒ No
- e. Result: N/A
- f. Date of result and citation or case number (if known): N/A
- g. Grounds raised:
N/A

14. Did you appeal the result of your state post-conviction case?

☐ Yes

☒ No

- a. Name of court: N/A
- b. Docket or case number (if known): N/A
- c. Result: N/A
- d. Date of result and citation (if known): N/A
- e. Grounds raised:
N/A

15. Did you seek further review of the decision on appeal by a higher state court?

☐ Yes

☒ No

- a. Name of court: N/A
- b. Docket or case number (if known): N/A
- c. Result: N/A
- d. Date of result and citation (if known): N/A
- e. Grounds raised:
N/A

16. If you did not appeal from the adverse decision in your state post-conviction case, explain briefly why you did not:
N/A

GROUND FOR RELIEF

17. For this petition, state *concisely* every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: In order to proceed in the federal court, normally you must exhaust (use up) your available state court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list (a-j) of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise grounds other than those listed.

- a. Conviction obtained by plea of guilty that was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- b. Conviction obtained by use of coerced confession.
- c. Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- d. Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- e. Conviction obtained by a violation of the privilege against self-incrimination.
- f. Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- g. Conviction obtained by a violation of the protection against double jeopardy.
- h. Conviction obtained by action of a grand or petit jury that was unconstitutionally selected and impaneled.
- i. Denial of effective assistance of counsel at trial or on appeal.
- j. Denial of right of appeal.

A. Ground One:

Conviction obtained by plea of guilty that was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

Supporting FACTS (state *briefly* without citing cases or law):

Respectfully, I was not made aware that the case would be easily accessible online for my community to be able to obtain. I didn't realize my reputation as a student, employee and relationship with my friends/colleagues would be significantly affected. In result I have lost my job, most recently applying for school scholarships/financial aid are difficult to get accepted, I don't get call backs from employers including temporary-work, full-time work, part-time work.

B. Ground Two:

Denial of effective assistance of counsel at trial or on appeal

Supporting FACTS (state *briefly* without citing cases or law):

Respectfully, I was not made aware when the investigation was completed, I was not made aware that my attorney was possibly in contact with Kayla Kay Papa-Vicente and other members in her or my circles. I was not made aware that there were text messages/electronic communication presented in the case. I was not made aware of the statements that were typed/written by police officers in the case. I wasn't made aware that no contest/ assault in the 4th degree with probation supervision was my only option beside going to trial.

C. Ground Three:

Conviction obtained by a violation of the privilege against self-incrimination.

Supporting FACTS (state *briefly* without citing cases or law):

Respectfully, I was not made aware of a voicemail being in the case, or electronic messages.

D. Ground Four:

Conviction obtained by action of a grand or petit jury that was unconstitutionally selected and impaneled.

Supporting FACTS (state *briefly* without citing cases or law):

Respectfully, information can be leaked online and obtained by anyone browsing the web. In this case, my privacy was violated through harassment, intimidation, bullying, cyber-bullying, stalking, or/and by other means.

OTHER INFORMATION

18. Please answer these additional questions about the petition you are filing:

- a. Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?

☐ Yes

☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

Respectfully, I was not made aware that Kayla Kay Papa-Vicente waiting 2-3 days to contact authorities would be favorable in my case.

- b. Is there any ground in this petition that has not been presented in some state or federal court? If so, indicate which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

19. Do you have any petition or appeal now pending (filed and not decided yet) in any court, state or federal, for the judgment you are challenging here?

☒ Yes

☐ No

If the answer is "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:

In the court of Appeals of the State of Oregon, Appellate Court Administrator 2850 Broadway St NE, Salem, OR 97303
 County Case Number: 23LT15034

~~The plaintiff-landlord prevented Duarte Papa-Vicente(me) from paying rent. I ask that the plaintiff-landlord not be awarded possession of the premises and that I be awarded my costs and fees, lawyers fees (if any, under ORS 90.255), and a prevailing party fee under ORS 20.190.~~

20. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- a. At preliminary hearing:
 Kate McMurchie, Ruben Murayama, and Sara Mulroy

- b. At arraignment and plea:
 Kate McMurchie, Ruben Murayama, and Sara Mulroy

- c. At trial:
 Kate McMurchie, Ruben Murayama, and Sara Mulroy

- d. At sentencing:
 Kate McMurchie, Ruben Murayama, and Sara Mulroy

- e. On appeal:
 N/A

- f. In any post-conviction proceeding:
 Drew Flood

- g. On appeal from any adverse ruling in a post-conviction proceeding:
N/A
21. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?
- ☐ Yes ☒ No
- a. If yes, in what court was the prior action filed? N/A
- b. What was the prior case number? N/A
- c. Was the prior action: ☐ Decided on the merits, or
☐ Dismissed on procedural grounds
- d. Date of decision: N/A
- e. Are there any issues in this petition raised in the prior petition?
- ☐ Yes ☒ No
- f. If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this successive petition?
- ☐ Yes* ☒ No
- *If the answer is "Yes," you *must* attach a copy of the order received from the Ninth Circuit Court of Appeals.
22. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
- ☒ Yes ☐ No
- a. If so, give the name and location of the court that imposed the sentence to be served in the future:
Multnomah Central Courthouse, 1200 SW First Ave Portland, Oregon, 97204
- b. Give the date and length of sentence to be served in the future:
Date: 09/19/2023
Case Number: 23CR41427
- c. Have you filed, or do you contemplate filing, any petition attacking the judgment that imposed the sentence to be served in the future?
- ☐ Yes ☒ No

23. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition:

24. Date you are mailing (or handing to correctional officer for mailing) this petition to the Court:*

12/20/2023

WHEREFORE, petitioner prays that the Court will grant such relief to which he or she may be entitled in this federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by a person in state custody.

 Signature of Attorney (if any)

DECLARATION UNDER PENALTY OF PERJURY

I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

 Date

 Signature of Petitioner

* As noted in the instructions to this form (at #8), if you are incarcerated at Snake River Correctional Institution, you must comply with the requirements of the E-Filing Program posted at the institution and set forth in Standing Order 2019-7. Accordingly, you must submit your filings in this case to Snake River Correctional Institution staff for scanning and electronic submission, instead of mailing the filings using the U.S. Postal Service. Please indicate the date you submitted this petition to Snake River Correctional Institution staff for scanning and electronic submission, if you are incarcerated there.